

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Application by SBC Communications, Inc.) WC Docket No. 03-167
for Authorization to Provide In-Region)
InterLATA Services in the States of)
Illinois, Indiana, Ohio, and Wisconsin)

**REPLY COMMENTS OF
THE OHIO CONSUMERS' COUNSEL**

I. INTRODUCTION AND SUMMARY

Robert S. Tongren, in his capacity as the Ohio Consumers' Counsel ("OCC") on behalf of the residential customers of SBC Ohio, submits these Reply Comments in the above-captioned proceeding. The OCC's initial Comments in this proceeding urged the Federal Communications Commission ("Commission" or "FCC") to reject the instant Application of SBC Communications, Inc. ("SBC") for authority to provide in-region interLATA service in Ohio.¹ The military-style testing of critical elements of SBC's operational support systems ("OSS") is incomplete, and may not be completed until after the October 15, 2003 deadline for the Commission to act on SBC's Application. Thus, approval of the Application at this time is premature.

The parties filing in support of SBC's Application present no new arguments that have not been raised by SBC in its Application or the Public Utilities Commission of

¹ Because the OCC is the statutory representative of Ohio's residential utility customers (*see* Ohio Rev. Code Chapter 4911), the OCC's Comments specifically address SBC's application to provide interLATA service in Ohio. Many of the principles discussed in OCC's Comments apply to the other three states that are the subject of the instant Application.

Ohio ("PUCO") in its Report and Evaluation dated June 26, 2003. These arguments have been adequately refuted by the comments of the OCC and other parties. Thus, the OCC will not respond further to the Application's proponents in these Reply Comments. Instead, the OCC focuses on the Evaluation of the United States Department of Justice ("Justice Evaluation"), submitted August 26, 2003, to which the Commission must give "substantial weight...."² The Justice Evaluation, along with the comments of several competitive local exchange carriers ("CLECs"),³ demonstrate that, although SBC has made progress in improving its OSS, problems continue to plague critical aspects of SBC's billing and order processing functions. The Commission should not approve a SBC § 271 application until SBC has "implement[ed] a lasting and comprehensive solution" to its OSS problems.⁴

Although the public utility commissions of the four states have endorsed the Application, the Commission has determined that state commission evaluations are not dispositive of the issue of whether a Bell Operating Company's § 271 application should be granted. Rather, state commission evaluations are just one of many components in the Commission's determination:

[A]lthough the Commission will consider carefully state determinations of fact that are supported by a detailed and extensive record, it is the Commission's role to determine whether

² 47 U.S.C. § 271(d)(2)(A).

³ CLECs filing individual comments include: AT&T Corp. ("AT&T"); MCI; Access One, Inc.; Forte Communications; NuVox Communications, Inc.; Globalcom, Inc.; CIMCO Communications, Inc.; Z-Tel Communications, Inc.; RCN Telecom Services of Illinois, LLC; TDS Metrocom, LLC and Northern Telecom and Data Corporation. In addition, joint comments were submitted by ACN Communications Services, Inc., BullsEye Telecom, Inc., Choice One Communications Inc., CIMCO Communications, Inc., Indiana Fiber Works, LLC, Mpower Communications Corp. and PowerNet Global Communications, Inc. (collectively, "ACN").

⁴ Justice Evaluation at 14.

the factual record supports a conclusion that particular requirements of section 271 have been met.⁵

As discussed below, the record in this proceeding shows that SBC has yet to meet key requirements of § 271. Therefore, the Commission must reject SBC's Application at this time.

II. THE RECORD IN THIS PROCEEDING DEMONSTRATES THAT GRANT OF SBC'S APPLICATION IS PREMATURE.

The CLECs have described in great detail their problems in dealing with SBC's OSS in Ohio and the other former Ameritech states, especially in the areas of billing and the processing of orders.⁶ In its review of the record of this proceeding, the Justice Department found that SBC's billing processes have the same problems in Ohio, Illinois, Indiana and Wisconsin that the Justice Department identified in its evaluation of SBC's § 271 application for Michigan.⁷ Moreover, some of the CLEC commenters "raise new issues concerning ongoing billing problems with SBC."⁸ Some CLECs allege that 20 to 35 percent of their billings have contained overcharges, with up to 87 percent of the disputes being resolved in the CLEC's favor.⁹ This high percentage of disputes resolved in favor of CLECs is a clear indication that the problems lie primarily with SBC, not the CLECs.

⁵ See *In the Matter of the Application of BellSouth Corporation, et. al. Pursuant to Section 271 of the Communications Act of 1934, As Amended, to Provide In-Region, InterLATA Services in South Carolina*, CC Docket No. 97-208, Memorandum Opinion and Order, 13 FCC Rcd 539 (1997), ¶ 29.

⁶ See, e.g., AT&T Comments at 27-43; MCI Comments at 6-12; ACN Comments at 2-30.

⁷ See Justice Evaluation at 2.

⁸ Justice Evaluation at 9.

⁹ *Id.* at 9-10.

On the other hand, SBC has failed to show that its billing problems are insignificant or that it has devised a long-term solution to these problems.¹⁰ To the contrary, in a filing in the proceeding concerning SBC's latest Michigan application, SBC acknowledged "the validity of additional billing claims made by the CLECs, as well as problems not yet discovered by the CLECs."¹¹ The Justice Department also observed that SBC has failed to offer any objective measure that would demonstrate improvement of its billing performance and has failed to show that it has undertaken a thorough examination of its billing system to determine the root causes of its problems.¹²

SBC should not be rewarded for its failure to develop a comprehensive and lasting solution to its OSS problems. Nor should the Commission rely on the compliance plans that state commissions have used as a surrogate for completion of SBC's OSS testing. As the Indiana Office of Utility Consumer Counselor ("OUCC") stated, "The promise of *future* compliance should not be deemed to satisfy Section 271 requirements – actual compliance should be demonstrated."¹³ SBC must not be granted § 271 approval for Ohio until it has shown that all of its OSS problems are irreversibly solved.

The Commission should also place little reliance on the existing remedy plans to prevent backsliding by SBC. The CLECs' comments demonstrate that the financial remedies imposed on SBC through various agreements and agency orders are insufficient incentives for SBC to correct the fundamental OSS problems in a timely manner.¹⁴ As

¹⁰ *Id.* at 12.

¹¹ *Id.* at 14 (footnotes omitted).

¹² *Id.* at 12-13.

¹³ OUCC Comments at 3 (emphasis in original).

¹⁴ *See, e.g.,* AT&T Comments at 85-89; MCI Comments at 12-14.

PUCO Commissioner Judith Jones noted, SBC “merely budgets for civil forfeitures levied by the PUCO or the FCC.”¹⁵

In addition, the Commission should discount the PUCO finding that SBC’s interLATA entry is in the public interest.¹⁶ The PUCO’s finding is not contingent on the continuation of an affordable rate for SBC Ohio’s unbundled network element platform (“UNE-P”). An affordable UNE-P is the primary reason for the existence of the competition in the SBC Ohio service territory upon which SBC relies to show that its OSS is functioning properly. It is no coincidence that residential competition finally took hold in Ohio after the PUCO established affordable rates for SBC’s UNE-P.¹⁷

The Justice Department’s table on CLEC Entry by State – based on SBC data – shows that CLECs rely almost exclusively on the UNE-P to serve residential customers in Ohio.¹⁸ According to the SBC data cited by the Justice Department, CLECs use the UNE-P to serve 17.6% of the residential access lines in SBC’s Ohio territory.¹⁹ The other one percent of the CLECs’ share is comprised of facilities-based or resale service.²⁰ Thus, according to the Justice Department’s estimation, approximately 94.6% of the residential local competition in SBC’s Ohio service territory is served through the UNE-

¹⁵ *In the Matter of the Further Investigation Into Ameritech Ohio’s Entry Into In-Region InterLATA Service Under Section 271 of the Telecommunications Act of 1996*, PUCO Case Nos. 96-702-TP-COI and 00-942-TP-COI, Order (June 26, 2003), Separate Opinion of Commissioner Judith A. Jones Concurring in Part and Dissenting in Part at 2.

¹⁶ PUCO Report and Evaluation at 246.

¹⁷ *In the Matter of Review of Ameritech Ohio’s Economic Costs for Interconnection, Unbundled Network Elements and Reciprocal Compensation for Transport and Termination of Local Telephone Traffic*, PUCO Case No. 96-922-TP-UNC, Entry on Rehearing (January 31, 2002).

¹⁸ Justice Evaluation at 7.

¹⁹ *Id.*

²⁰ *Id.*

P.²¹ Although CLECs' use the UNE-P to serve residential customers is far greater in Ohio than in the other three states that are the subject of this Application, use of the UNE-P for residential competition exceeds 50 percent in all four states.²² Without an affordable UNE-P, the competition upon which SBC relies to demonstrate its compliance with § 271 would likely evaporate.

Ohio consumers need more local competition, not an additional player in an already-competitive long distance market. The continued existence of an affordable UNE-P in SBC's Ohio service territory is vital to the continued existence of local competition in Ohio. Thus, absent a requirement that SBC continue offering an affordable UNE-P, granting SBC's Application for Ohio is not in the public interest.

III. CONCLUSION

The record in this proceeding shows that residential competition in the former Ameritech states has developed not because of SBC's OSS, but in spite of it. CLECs have struggled for years to overcome the obstacles presented by SBC's flawed billing and order processing systems. The military-style testing of SBC's OSS has helped identify many systemic OSS problems, and the collaborative efforts of the parties involved have resulted in comprehensive solutions to most of those problems. The military-style testing of SBC's OSS is incomplete, however; critical aspects of SBC's OSS are still being tested. Without lasting solutions to the billing and order processing problems, as well

²¹ Using the figures from the table, UNE-P accounts for 468,834 of the 495,472 residential access lines served by CLECs in SBC Ohio's service territory. *See id.*

²² UNE-P accounts for approximately 67 percent of residential competition in Indiana, approximately 64 percent in Illinois and approximately 55 percent in Wisconsin. *See id.*

as assured continuation of an affordable UNE-P, the continued viability of residential competition in Ohio is uncertain. Thus, approval of SBC's current Application is premature and is not in the public interest. The Commission should deny the Application at this time.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of the Ohio Consumers' Counsel were served by first class mail, postage prepaid, or by e-mail to the parties identified below this 29th day of August 2003.

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